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October 21, 2024

**VIA ACMS FILING**

Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
James R. Browning Courthouse  
95 Seventh Street  
San Francisco, CA 94103

Re: *Doe, et al. v. Github, Inc., et al.*, No. 24-6136 (9th Cir.)

Dear Ms. Dwyer,

On October 17, 2024, Respondents filed responses to the Petition for Permission to Appeal Order Certified Under 28 U.S.C. § 1292(b) in the above referenced case. One of those responses argues that Petitioners do not have standing to pursue the underlying claims as a ground to reject the petition. Dkt 14.1 at 19–22 (the “GitHub Response”). The district court, however, *twice* rejected this argument and held that Plaintiffs have standing. *See Doe v. GitHub, Inc.*, No. 22-06823, slip op. at 6-9 (N.D. Cal. Jan. 3, 2024) (order granting in part denying in part motion to dismiss); *Doe v. GitHub, Inc.*, 672 F. Supp. 3d 837, 849-52 (N.D. Cal. 2023).

Respondents did not seek certification for an interlocutory appeal of that issue. If, however, the Court is inclined to construe the GitHub Response as a cross-petition or to otherwise consider this non-certified issue in deciding whether to grant permission to appeal the issue certified by the district court, then Petitioners respectfully request leave to file an answer or reply on the non-certified issue. *See Reese v. BP Expl. (Alaska) Inc.*, 643 F.3d 681, 689-90 (9th Cir. 2011) (“An appellee is well-advised, in seeking interlocutory review of issues not certified, to file a Rule 5(b)(2) cross-petition. Its failure to do so and election to raise an issue only in its

Molly C. Dwyer  
October 21, 2024  
Page 2

answering brief disadvantages appellants, who are unable to anticipate presciently and to address adequately the issue in their opening brief.”).

Respectfully Submitted,

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